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# Introduction

## Purpose

This submission is provided to the Queensland Competition Authority in accordance with clause 8.4(a) of QR Network's 2010 Access Undertaking:

*Following consultation with stakeholders, QR Network will submit to the QCA Proposed Standard Rail Connection Agreement within nine (9) months after the Approval Date, or such further period as the QCA may in its absolute discretion determine*

In preparing this connection agreement, QR Network has included terms and conditions that have been used in specific negotiations for connections on the network over the past 2 years.

This submission outlines the key principles behind QR Network's proposed Standard Connection Agreement (**SCA**) for Customer Specific Branch Lines.

It should be noted that QR Network does not propose to use this SCA for the connection of major new rail expansions. From its discussions to date with customers who are seeking the connection of a major expansion to the network QR Network has identified that these connections may require varied terms and conditions.

QR Network in offering this agreement aims to meet its obligation under the Rail (Transport Safety) 2010 Qld Act which requires it to have an Interface Risk Management Plan in place with the rail manager of the Customer Specific Branch Line.

## What the SCA covers

The SCA is intended to cover the connection of private rail infrastructure to the declared facility for the purpose of entering loaded coal trains into the relevant individual coal system. It also includes appropriate provisions and obligations on the party seeking connection in relation to coal loss management.

The SCA does not cover an agreement between the Parties for:

- (a) access by QR Network or any third party to operate rollingstock on the Customer Specific Branch Line;
- (b) access by the Owner or any third party to operate rollingstock on the Network or the Connecting Infrastructure;
- (c) land tenure; or
- (d) services on the customer specific branch line (for example, Rail Manager services)

Arrangements for access to operate rollingstock on a Customer Specific Branch Line, the network and/or the connecting infrastructure are the subject of a separate agreement or agreements between relevant parties.

Connection to the rail network for services other than coal services where the connection is also to a loading or unloading facility are subject to contractual terms negotiated between QR Network and the other party. This is in line with the proposed amendments that QR Network lodged with the QCA as part of the 2010DAAU in December 2010.

## Consequential amendments

Section 8.4 of the Access Undertaking does not provide QR Network with the ability to provide consequential amendments to the Undertaking associated with the lodgement and approval of a Standard Connection Agreement. As such, any operative changes required to ensure the integration of the Standard Connection Agreement with the Undertaking will be included in a future Draft Amending Access Undertaking (DAAU).

QR Network lodged with the QCA a DAAU in December 2010 which included consequential amendments to section 8.3 (Connecting Infrastructure) of the Access Undertaking. These amendments relate to clauses that do impact on the connecting infrastructure including QR Network's ability to recoup costs associated with constructing connecting infrastructure.

As discussed, the 2010AU does not provide QR Network with the ability to implement consequential variations to the Undertaking. Accordingly, this submission should be read in conjunction with QR Network's 2010DAAU of December 2010. QR Network provides the section of the explanatory notes<sup>1</sup> relevant to these amendments below for the sake of completeness.

### Connecting Infrastructure

The provisions in section 8.3 of the 2010AU outline the obligations in respect of the connection of private rail infrastructure. The drafting within this section is highly uncertain as to the obligations of the parties with respect to a connection agreement and includes material inconsistencies. Specifically, as drafted section 8.3 has the following anomalies:

- Clause 8.3(a) provides for an Access Seeker or an Access Holder to construct connecting infrastructure provided that party meets the initial and ongoing costs associated with constructing and maintaining. However, clause 8.3(f) required that QR Network is not able to enter an agreement for the recovery of these costs as all operating and maintenance costs are to be included in the cost build-up for the reference tariffs:
- The right to construct connecting infrastructure is also subject to QR Network exercising its rights to design, project manage, construct, maintain, upgrade the Connecting Infrastructure. However, it is not clear how the provisions also provide for QR Network to recover the reasonable and ongoing initial costs associated with those activities; and
- It is not clear what mechanism enables QR Network to recover all reasonable costs associated with connecting infrastructure not relating to train services included in a reference tariff.

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<sup>1</sup> QR Network, 2010DAAU Explanatory Note, December 2010, pp 40-41

QR Network has made minor amendments to the commercial requirements for connecting infrastructure to provide greater clarity regarding these issues.

A new subclause 8.3(c)(ii)(C) has been included to allow QR Network to enter into an agreement for connecting infrastructure which provides for the recovery of all reasonable costs associated for connecting infrastructure which is not related to assets included in a regulatory asset base and therefore a reference tariff.

For the avoidance of doubt, clause 8.3(f) has been amended to require that only connections relating to the connection of a loading or unloading point is included in reference tariffs. This ensures a consistent approach is maintained between current Customer Specific Branchlines and future Customer Specific Branchlines which may or may not be owned by QR Network.

Connecting Infrastructure associated with the connection of other rail infrastructure as defined in the Transport Infrastructure Act, above rail facilities and rail infrastructure not related to coal carrying train services will not be included in the regulatory asset base and the owner of the rail infrastructure connecting to the existing network is responsible for meeting all reasonable costs associated with that Connecting Infrastructure.

Where an Access Seeker or Access Holder does not believe the costs are reasonable the party may seek to resolve the dispute in accordance with clause 10.1 as provided for by clause 8.3(e)(v).

## Form of Submission

QR Network's submission on this matter is comprised of this document and also the terms of the SCA for Customer Specific Branch Line.

## Reference

Terms used within this submission align with the definitions used for the same terms in the SCA.

Unless specifically stated, references to the Access Undertaking are references to the 2010 Access Undertaking approved by the Queensland Competition Authority on 1 October 2010.

# Objectives

## Introduction

QR Network's objectives in providing terms and conditions for customers seeking to connect Customer Specific Branch Lines to the coal network can be summarised in three categories below:

- Providing a safe connection, built and upgrades over time, to a suitable standard (now and ongoing);
- Seeking reimbursement for the provision of connection services so that there is no incremental cost to QR Network for the connection, now or in the future; and
- Ensuring trains are loaded to appropriately manage risk on our network.

QR Network has offered Connection Agreements to customers over the past 2 years which contain substantially the same terms and conditions that QR Network is submitting to the QCA for approval. These agreements have been executed with the relevant customers; furthermore, parties interested in connecting infrastructure to the network have had the opportunity to approach QR Network to review these terms and conditions.

The main augmentation to the SCA for Customer Specific Branch Lines which has been provided over the past 2 years is the inclusion of coal loss provisions. Where the connection of a Customer Specific Branchline is owned by QR Network the coal loss provisions are being included in a Transfer Facilities Licence between QR Network and the Customer that operates the mine load outs on QR Network infrastructure.

These coal loss provisions ensure that QR Network has the ability to meet its obligation to comply with Coal Dust Management Plan that has been put in place by the Department of Environment and Resource Management. QR Network's customers were fully engaged in this process and sign-off of the final management plan. As a result customers should be familiar with the coal loss provisions included in the SCA.

QR Network considers the SCA is the most appropriate instrument for addressing the loadout performance standards as it is predominantly in the control of the Customer and not operators. Similarly, it also ensures that no party is disadvantaged by contractual form when electing to construct and own its own infrastructure.

The coal loss provisions within the SCA provide a contractual means to be able to suspend the right to use the connection where owners of customer specific branch lines do not address non compliance with the coal loss performance standards. This mechanism also provides a clear process for verification, rectification and resolution of cases where coal loss occurs.

The overarching principles included in QR Network's connection agreement are closely mimicked in Section 6.1 of the 2010 Hunter Valley Access Undertaking. This provides connecting customers with similar obligations and rights to connect, fund and have their asset managed as part of the network.

## Providing a safe connection, built and upgrades over time, to a suitable standard (now and ongoing)

QR Network is subject to the provisions of the *Transport (Rail Safety) 2010 Act (Qld)* and as such QR Network's primary driver within the SCA is to ensure that any infrastructure that is connected to the below rail network is done so safely and in a manner that will ensure the ongoing safety associated with train movements on and off its network.

To this extent the SCA contains provisions that ensure that any connecting infrastructure meets a required standard that will not impede safety or performance of the below rail network. As such, the SCA contains provisions (Part 6 & 7) that allow QR Network to inspect and upgrade the connecting infrastructure to meet operational efficiency characteristics of the network. Further, QR Network can ask the owner of the Customer Specific Branch Line to ensure that their infrastructure is built, maintained and operated to a standard that will not impact on the safety and performance of QR Network's network.

The main basis for this request to be made is for the ongoing safe operation of the network or the improved operational efficiency or upgrade of similar parts of the network. QR Network also has the ability to require an upgrade where the characteristics of trains running on the Customer Specific Branch Line have changed (for example, change in number, characteristics or cargo).

The SCA also ensures that there is a relationship between QR Network and the Rail Infrastructure Manager for the Customer Specific Branch Line for the purpose of entering into an Interface Risk Management Plan (IRMP) in accordance with the section 59 of the *Transport (Rail Safety) 2010 Act (Qld)*. Where an IRMP is not in place with the Rail Infrastructure Manager prior to the use of the connecting infrastructure the SCA provides QR Network with the ability to suspend the right to use the connection from the Customer Specific Branch Line. This suspension is provided to enable a safe environment for the movement of trains.

### Seeking reimbursement for the provision of connection services so that there is no incremental cost to QR Network for the connection, now or in the future

The underlying principle embodied within the Standard Connection Agreement is that the incremental user pays for the incremental expansion / connection to the system that would not have occurred but for their requirements. This includes any requirement to increase the standard of any Customer Specific Branch Line attached to the connecting infrastructure where this is required to boost the safety or operational efficiency of the coal network. The SCA also provides a mechanism for QR Network to ensure that the connecting infrastructure is modified, upgraded or replaced when required and is done at the cost of the owner of the Customer Specific Branch Line.

For the purpose of the connection of Customer Specific Branch Lines to the network and in accordance with the proposed amendments to the section 8.3(f), included in the 2010 DAAU, the SCA provides that the operation and maintenance of connecting infrastructure is included in the Reference Tariff.

The payment for the construction of the connecting infrastructure is borne by the Owner of the customer specific branch line and does not change the ownership of the connecting infrastructure. **Connecting Infrastructure is always owned by QR Network** and falls under QR Network's role as accredited rail manager.

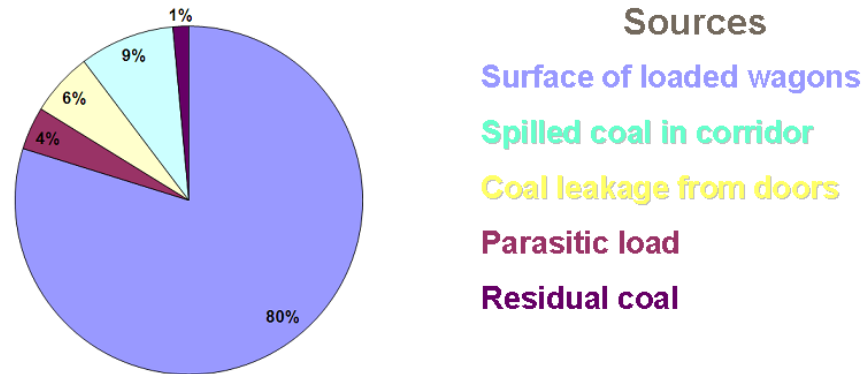
### Ensuring trains are loaded appropriately to manage risk on the network

QR Network is required to meet the requirements imposed by statutory authorities or legislation. Further, it has to ensure that it is able to provide a network in a condition that is able to meet its current and future contracted demand. As such, it needs to manage the risk associated with traffics operating on the network to be able to provide customers with long-term consistent access to paths on the network

QR Network is required to meet the requirements of the Coal Dust Management Plan (CDMP) (February 2010) approved by Queensland Department of Environment and Resource Management. The CDMP was developed after a number of studies by QR Network into the source of coal fouling and extensive industry consultation. The CDMP contains for a number of methods to minimise coal dust emission from wagons. Coal customers were heavily involved in this process and a number of presentations were made to on this matter through the Queensland Resources Council. The finalisation of the Coal Dust Management Plan required coal customer review of a number of coal loss mitigation studies applicable to both QR Network and the coal industry to manage coal loss. The terms of the coal loss requirements are well known within the coal industry.

QR Network is seeking to minimise the spillage of coal on its infrastructure and reduce the impact on below rail assets from wagons running over-height and over-weight. It has been shown through Network's coal loss studies, and validated through overseas research, that the loss of coal from the top of wagons constitutes approximately 80 per cent of all coal loss. The following diagram shows the comparative impacts of different sources of coal fouling.

Figure 1 – Source of coal fouling by source



QR Network, through the SCA, seeks to mitigate coal loss by including terms that bind the owner of the Customer Specific Branch Line to undertake the coal loss mitigation strategies that are proposed to be undertaken under a Transfer Facilities Licence. This requires that the owner perform load profiling and load veneering at the point of train loading. Veneering has been included to minimise the coal loss from the surface of wagons which is shown above to cause 80 per cent of all coal loss.

The SCA provides both QR Network and the owner of the Customer Specific Branch Line with a clear and defined pathway (verification, monitoring, reporting and rectification) for ensuring compliance with the methods for mitigating coal loss. Intervention at the loading point provides significant protection from coal loss on the rest of the network due to a veneer and profile being placed on each coal wagon. Where the owner of the Customer Specific Branch Line does not comply with the terms of the SCA to mitigate coal loss QR Network has the option and ability to suspend the right to use the connecting infrastructure.



## Other characteristics of the Standard Connection Agreement

### Insurance

QR Network has included an insurance amount in the Standard Connection Agreement of \$100 million. This amount is less than the amount of insurance payable under the Standard Access Agreement but is commensurate with the general liability risk that is covered. This risk is deemed to be lower for connecting infrastructure running onto the coal network where there is minimal chance of interaction with passenger traffic. The QCA noted and accepted QR Network's position on this threshold in their Final Decision<sup>2</sup> when accepting a \$350 million insurance amount

The Authority also accepts that this level of public liability insurance coverage is not unreasonable given public liability insurance requirements elsewhere and given the interaction with passenger services

QR Network still contends that the claims associated with the collision of freight traffic and passenger traffic would likely be significantly higher than those associated with the collision of two freight traffics and the insurance amount in the SCA is commensurate with this risk. QR Network may require an increased insurance amount of \$350 million where a connection is onto the network where passenger traffic operates.

### Liabilities / Indemnities / Consequential Loss

QR Network has included clauses with the SCA that reflect the similar intent of the liability, indemnity and consequential loss clauses within the Standard Access Agreement.

QR Network has provided that it will be liable for loss under the SCA but that it will not be liable for loss suffered outside of the Agreement. This is similar to clause 15.2 of the SAA which provides a limitation on consequential loss.

QR Network has included a cap on liability of a claim made against it under or in connection with the SCA.. This is included to ensure that there is equity in the risk position between the Owner and QR Network. QR Network does not price risk into its connection agreement and therefore does not expect to be subject to substantial risk from the agreement.

The SCA includes a cross indemnity for both QR Network and the owner of the Customer Specific Branch Line in situations other than negligent or wilful act or omission of QR Network or the owner and/or its officers, employees, agents or contractors. QR Network believes that this position is commensurate with the risk that each party bears over the connecting infrastructure.

### Rail Manager of Connecting Infrastructure

The SCA provides that QR Network will be the rail manager of the connecting infrastructure. This is to enable the smooth operation of entry onto in a way that maximises capacity throughput due to QR Network.

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<sup>2</sup> QCA, Final Decision, September 2010, pp 88-89

This is possible through QR Network's visibility of above rail operations on the network. This also allows the upgrade and maintenance of the connecting infrastructure in line with any mainline upgrades to boost operational efficiency of the rail network.

QR Network's role as rail manager of the mainline would be diminished if connecting infrastructure was operated by another rail operator. This would lead to an unacceptable situation where QR Network's mainline contained 'gaps' that were operated by another operator. QR Network's ability to manage the safety and operational performance of the mainline in this circumstance would be compromised.

## Security

QR Network seeks a security amount (to be provided as an unconditional and irrevocable bank guarantee) to be provided by the Owner of the Customer Specific Branch Line prior to the construction of the connecting infrastructure to cover any amounts that are outstanding under the connection agreement. This is consistent with contracts that QR Network has entered for services with Access Holders or seekers. For instance, the Standard Access Agreement requires an Access Holder to provide a security amount to cover the failure to pay access charges under the contract or the deductible under insurance. Asciano supported this type of deposit in their submission on the SAA as part of the Access Undertaking consultation period<sup>3</sup>:

*The intention of security deposits in agreements between QR and operators, ..., should be to protect QR in the event the operator cannot meet the charges levied against them*

The SCA requires a similar mechanism to ensure that QR Network can recoup the costs associated with the connection, particularly any deductibles under any insurance claim.

## Train Service Plan

The inclusion of a train service plan within the SCA enables QR Network to assess the level of activity that is intended over the connecting infrastructure. Ideally, the train services in the train service plan should align to the number of paths that have been sought from the destination serviced by the Customer Specific Branch Line. The inclusion of the train service plan also allows the appropriate design of the connection and forms the basis of the Interface Risk Management assessment of the connection. This then allows QR Network to establish a charge for the maintenance of the connecting infrastructure and allows for this to be revisited where the train service plan changes. This provides a mechanism for the accurate pricing of maintenance and operational expenditure to be recouped as part of the Reference Tariff.

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<sup>3</sup> Asciano Response to QR Undertaking 2010, May 2010

## Consultation

The terms of the SCA without the coal loss mitigation provisions have remained relatively stable over the past two years. Over this period QR Network has signed eight connection agreements with customers that contain similar terms to that provided in the SCA. This agreement has been provided to connecting customers over the last two years and as such was available to anyone who wanted to view the document. Therefore, QR Network believes that sufficient customers have had access to the terms and conditions that are being proposed as part of the SCA.

QR Network has also run a detailed consultation process to provide customers with the ability to question and refine the coal loss mitigation provisions that have been included in the SCA. QR Network has approached each customer that operates a loading facility in order to negotiate a Transfer Facilities Licence. Coal loss mitigation provisions similar to those included in the SCA have been discussed and agreed with customers in the past 12 to 15 months.

Given this consultation process and the high visibility of these coal loss provisions, QR Network believes that it has adequately consulted customers on these provisions that will be included in the SCA.

Notwithstanding the above, QR Network is committed to further consultation on this matter through the Queensland Resources Council after this submission to the QCA. This will ensure that the terms of the Standard Connection Agreement are made clear to coal customers and that they have the ability to question and receive specific information on areas of interest.